

STATE OF NEW MEXICO
TAXATION AND REVENUE DEPARTMENT
QUARTERLY PASS-THROUGH ENTITY WITHHOLDING TAX RETURN

Who Must File: Beginning January 1, 2011, a pass-through entity (PTE) must deduct and withhold from each nonresident owner's share of New Mexico net income and remit the tax withheld to the Department using Form RPD-41355, *Quarterly Pass-Through Entity Withholding Tax Return*. See the instructions for important definitions. For exceptions and adjustments to the requirement to withhold, see page 2 of these instructions.

A PTE is also required to file annual returns to the Department, and to provide to each of its owners sufficient information to enable the owner to comply with the provisions of the Income Tax Act and the Corporate Income and Franchise Tax Act, with respect to the owner's share of the net income.

When to File: The withholding tax is due on or before the 25th day of the month following the close of the calendar quarter in which the net income was earned. If the due date of the return falls on a Saturday, Sunday or state or national legal holiday, the return is timely if the postmark bears the date of the next business day. If no net income was earned during a quarter, or no payment of pass-through entity withholding was made for a reporting period, no return is due.

Where to File: Mail only the bottom portion with your payment to: New Mexico Taxation and Revenue Department, P.O. Box 25123, Santa Fe, NM 87504-5123. Make the check or money order payable to the New Mexico Taxation and Revenue Department. Retain the top portion for your records. For assistance call (505) 827-0825.

FEIN:	
Name:	
Street/box:	
City, state, ZIP:	Check if address is outside the U.S. <input type="checkbox"/>

Quarterly report period:

	Beginning (mm-dd-yy)	Ending (mm-dd-yy)
1. Net income		.00
2. Exceptions and adjustments		.00
3. Net income subject to withholding		.00
4. Amount withheld		.00
5. Penalty		.00
6. Interest		.00
7. TOTAL		.00

▽ PLEASE CUT AND RETURN BOTTOM PORTION WITH YOUR PAYMENT ▽

QUARTERLY PASS-THROUGH ENTITY WITHHOLDING TAX RETURN

FEIN:	
Name:	
Street/box:	
City, state, ZIP:	Check if address is outside the U.S. <input type="checkbox"/>

Quarterly report period:

	Beginning (mm-dd-yy)	Ending (mm-dd-yy)
1. Net income		.00
2. Exceptions and adjustments		.00
3. Net income subject to withholding		.00
4. Amount withheld		.00
5. Penalty		.00
6. Interest		.00
7. TOTAL		.00

Check if amended ☐

Signature _____ Date _____ E-mail address _____

Mail to: Taxation and Revenue Department, P.O. Box 25123, Santa Fe, NM 87504-5123

PTW

STATE OF NEW MEXICO - TAXATION AND REVENUE DEPARTMENT

Quarterly Pass-Through Entity Withholding Tax Return Instructions

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IMPORTANT DEFINITIONS:

"Net Income" means, for any pass-through entity (PTE), the income reported to an owner, by the PTE for federal income tax purposes, including ordinary business income or loss, net rental income or loss, guaranteed payments to a partner of a partnership, dividends, royalties and capital gain or loss, less associated deductions, plus interest earned on a state or local bond, less interest earned on a bond issued by the state of New Mexico or its political subdivisions, less income from obligations of the United States less expenses incurred to earn that income; in the case of a subchapter S corporation, "net income" also includes income taxable to the corporation for federal income tax purposes. Net income also includes appropriate allocation and apportionment of that income to New Mexico in accordance with the Uniform Division of Income for Tax Purposes Act.

"Pass-through entity" means any business association other than:

- a sole proprietorship;
- an estate or trust that does not distribute income to beneficiaries;
- a corporation, limited liability company, partnership or other entity not a sole proprietorship taxed as a corporation for federal income tax purposes for the tax year;
- a partnership that is organized as an investment partnership in which the partners' income is derived solely from interest, dividends and sales of securities;
- a single member limited liability company that is treated as a disregarded entity for federal income tax purposes; or
- a publicly traded partnership as defined in Subsection (b) of Section 7704 of the Internal Revenue Code.

"Owner" means a partner in a partnership not taxed as a corporation for federal income tax purposes for the tax year, a shareholder of an S corporation or of a corporation other than an S corporation that is not taxed as a corporation for federal income tax purposes for the tax year, a member of a limited liability company or any similar person holding an ownership interest in any pass-through entity.

"Partnership" means a combination of persons, including a partnership, joint venture, common trust fund, association, pool or working agreement, or any other combination of persons treated as a partnership for federal income tax purposes.

INSTRUCTIONS FOR COMPLETING THIS FORM: Complete all information requested. Round all money amounts to the nearest whole dollar; for example; enter \$10.49 as \$10 and \$10.50 as \$11. Enter the PTE's federal employer identification number (FEIN) and the report period. A report

period is based on a calendar quarter. Enter the month, day and year of the first and last day of the reporting period in which the net income was earned; for example, for the last quarter of 2011, enter 10-01-11 and 12-31-11. Enter the name and mailing address of the PTE. If the address is outside the U.S. mark the indicator box. Check the amended box if amending a previously filed return. See the instructions below to complete lines 1 through 7. Upon completion of the form, sign, date and enter your E-mail address on return.

Line 1: Enter the PTE's New Mexico net income earned for the quarter. If a PTE has been in existence for at least one full tax year prior to the current calendar year, the PTE may use one-fourth of its total New Mexico net income for the preceding full tax year to compute the amount required to be deducted and withheld each quarter. When making this election, you may not subtract any exemptions or adjustments to New Mexico net income in line 2. Enter the New Mexico net income on lines 1 and 3, then complete the remainder of the form as instructed.

Line 2: Enter the New Mexico net income that was not withheld from because the owner(s) qualified for an exception or adjustment listed in these instructions on page 2. When an adjustment occurs, include on this line, the New Mexico net income from the eligible transaction to which the tax withheld was computed, thereby excluding that amount from net income subject withholding on line 3.

Line 3: Subtract line 2 from line 1, and enter the amount on line 3. This is the New Mexico net income subject to withholding.

Line 4: Enter the amount of tax withheld from the net income of the PTE reported on line 3 above. Calculate withholding by multiplying the net income subject to withholding of the owner (line 3) by 0.049 or the current rate according to the Pass-Through Entity Withholding Tax Rate Table below.

The rate of withholding is 4.9% for report periods beginning on or after January 1, 2011. The withholding rates are set by Department directive, and may not exceed the higher of the maximum tax bracket rate set for the Personal Income Tax Act or the Corporate Income and Franchise Tax Act. The department must give 90 day notice of a change to the withholding rate.

Line 5: Penalty. Add penalty if the entity fails to file timely or to pay the amount on line 4 when due. Calculate the penalty by multiplying the unpaid amount on line 4 by 2%, then by the number of months or partial months for

Pass-Through Entity Withholding Tax Rate Table

If your report period begins on or after:

the effective rate is:

Jan 1, 2011 4.90%

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which the return or payment is late, not to exceed 20% of the tax due. The penalty may not be less than \$5.00.

Line 6: Interest. Interest accrues daily on the unpaid principal of tax due, and can change on a quarterly basis. The effective annual and daily interest rates are posted on the Department's web page at www.tax.newmexico.gov or can be obtained by contacting the Department.

Line 7: Add lines 4, 5 and 6.

If requesting a refund of PTE withholding tax paid due to an overpayment of tax withheld, complete Form RPD-41071, *Application for Tax Refund*, and submit an amended Form RPD-41355, *Quarterly Pass-Through Entity Withholding Tax Return*, for the report period in which you over-reported the withholding tax withheld. Be sure to check the amended return indicator to ensure proper processing of your amended return.

Exceptions to the requirement to withhold.

1. If the amount to be withheld from an owner's share of net income in any calendar quarter is less than \$30.00, no withholding is required.
2. At the option of a PTE, a PTE may agree with the owner that the owner pay the amount that the PTE would have been required to withhold and remit to the department on behalf of the owner pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act. The payments by the owner shall be remitted on Form RPD-41356, *Pass-Through Entity Owner's Quarterly Tax Payment*, and on the due date of this return. The PTE must have a completed Form RPD-41353, *Nonresident Owner's or Remittee's Agreement to Pay Withholding On Behalf of a Pass-Through Entity or Remitter*, on file at the time it files its return for the tax year to which the agreement pertains. A PTE is liable for amounts that an owner has agreed to remit, once the department notifies the PTE that the owner failed to remit the payment.
3. The owner maintains its place of business or residence in New Mexico:
 - If a corporation, a signed and notarized Form RPD-41354, *Declaration of Principal Place of Business or Residence in New Mexico*, is on file that the corporation's principal place of business is in New Mexico, or
 - If a corporation incorporated in New Mexico, the corporation's incorporation papers are on file, with sufficient portions of those papers to demonstrate incorporation in New Mexico, or information from the public regulation commission website indicating that the corporation is a New Mexico corporation in good standing and its address, or
 - If an individual, a signed and notarized Form RPD-41354, *Declaration of Principal Place of Business or Residence in New Mexico*, is on file that the individual is a resident of New Mexico and declaring the

physical location of the individual's abode in New Mexico.

4. Documentation is on file showing that the owner is granted exemption from the federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(3) of the Internal Revenue Code, including a copy of the owner's federal Form W-9, or a copy of the determination letter from the IRS;
5. Documentation is on file showing that the owner is the United States, New Mexico or any agency, instrumentality or political subdivision of either;
6. Documentation is on file showing that the owner is a federally recognized Indian nation, tribe or pueblo or any agency, instrumentality or political subdivision thereof;
7. Documentation showing the PTE's inability to make payment of withholding from net income for the quarter due to non availability of cash or due to contracts and other binding written covenants with unrelated third parties, unless cash payments have been made to any owner during the quarter, in which case the PTE is liable for payment of the withholding amount due up to the extent of the cash payment made during the quarter;
8. The PTE made a timely election for federal income tax purposes that changes the net income of a pass-through entity in a prior quarter is reasonable cause for failure to withhold and deduct the required amounts on the change in net income due to the election, or
9. With respect to tax years 2014 through 2018, the PTE has elected pursuant to 26 USC 108(i) to defer income from the discharge of indebtedness in conjunction with the reacquisition after December 31, 2008 and before January 1, 2011 of an applicable debt instrument for the period 2014 through 2018 and the entity has insufficient cash to remit the withholding amount due on the deferred income reported in the year.

Adjustments to the amount withheld:

- The amount of tax withheld from the owner's net income may be reduced, by not below zero, by the amount required to be withheld for oil and gas proceeds.
- If a PTE has deducted and withheld an amount pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act, from the net income of an owner that is also a PTE, the payee PTE may take credit for that amount in determining the amount the payee PTE must withhold and deduct.

When an adjustment occurs, include on line 2, the New Mexico net income from the eligible transaction to which the tax withheld was computed, thereby excluding that amount from net income subject withholding on line 3.